

# LifeZette

## Six Cases Justice Kavanaugh Might Impact Quickly

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Conservatives hope Supreme Court Justice Brett Kavanaugh will provide the deciding vote on a host of contentious legal issues — from affirmative action to abortion and religious freedom — where they often lost former Justice Anthony Kennedy, the fifth “swing vote.”

While legal experts predict that Kavanaugh will have great influence in shaping the law in those and other areas, however, they contend it might take some time for his impact to be fully felt. The current term does not have many hot-button issues so far.

“As it is, the term is kind of low-key for now,” said Ilya Shapiro, a senior fellow in constitutional studies at the libertarian Cato Institute.

And Kavanaugh missed the few high-profile cases that are on the docket because of the sexual-assault accusations that delayed his confirmation, Shapiro told LifeZette.

“Ironically, most — if not all — of the easily identifiable cases were already argued this past week,” he said.

Kavanaugh (pictured above) heard his first two cases as a Supreme Court justice on Tuesday.

If any of those cases deadlocked, however, Kavanaugh still could provide the tie-breaking vote. John Eastman, director of the Center for Constitutional Jurisprudence at Chapman University in California, told LifeZette the justices could set any case for re-argument.

“They could easily set it for March or April and decide it then,” he said.

That happened in a case that resulted in a 4-4 tie after then-Justice Antonin Scalia died in 2016. New Justice Neil Gorsuch in 2017 [broke the tie](#) after the justices heard the case again and sided with the majority in ruling that a legal immigrant could not be deported for committing a pair of burglaries because the statute did not clearly define it as a violent crime.

Even that might be unnecessary, though.

“They’ve got a fifth vote-breaker right there,” said Mat Staver, founder and chairman of the evangelical Christian Liberty Council.

Staver said Kavanaugh could read the briefs and listen to a recording of the oral argument in any case where the justices are evenly split. He noted how this is what happened in a case he once argued before the court. Then-Chief Justice William Rehnquist was undergoing cancer treatment and missed the oral argument. But he participated in the final decision.

Over the long term, experts believe Kavanaugh will push the court in a more originalist direction. Shapiro said affirmative action seems to be the area of the law most likely to change. He added that the justices might now feel more confident taking cases on issues like guns and redistricting where they might have been unsure how Kennedy would come out.

But Shapiro said the changes likely will not be as rapid or dramatic as critics fear and Kavanaugh's supporters hope.

Shapiro said that Kennedy, whom Kavanaugh replaces, was not exactly a liberal. In the last court term, Kennedy did not side with the four liberal-leaning justices on a single case that split 5-4.

On issues like labor rights, campaign finance, and deference to law enforcement, the direction of the court likely will not change, Shapiro said.

"In most of these areas, Kennedy was already with the conservatives," he said.

Shapiro said Kavanaugh has a special expertise in administrative law that Kennedy did not. As a result, he said, the new justice may push harder.

"The votes won't be that different," he said. "But that's not something Kennedy was known for. He'll be a stronger voice on those kinds of cases."

Here are six specific cases on which Kavanaugh might have an early impact.

**1.) Gundy v. United States.** The case, argued before Kavanaugh arrived, turns on a provision of the Sex Offender Notification and Registration Act (SONRA), which gives the attorney general the power to require people to register as sex offenders for crimes committed before the law took effect. Both sides faced tough questions during oral arguments.

**2.) Weyerhaeuser Company v. United States Fish and Wildlife Service.** Another case heard before Kavanaugh took office, the dispute asks justices to decide whether the Endangered Species Act prohibits designation of privately owned land as unoccupied critical habitat if it is neither habitat nor essential to species conservation. The dusky gopher frog in Louisiana prompted the case.

**3.) Madison v. Alabama.** This death penalty case will determine whether it is "cruel and unusual punishment" to execute an Alabama murderer whose dementia has caused him to lose any memory of his crime. This is another case in which oral arguments suggested a possible 4-4 tie that Kavanaugh might be called upon to break. But some legal observers said Chief Justice John Roberts may find a way to craft a narrow opinion that does not serve as a broader precedent. Kavanaugh also might influence three cases that the court could decide to review later in the term.

**4.) The American Legion v. American Humanist Association.** A federal appeals court ruled that the size and prominence of the cross that is part of a nearly 100-year-old war memorial in Maryland violates the First Amendment's establishment clause.

**5.) Andersen v. Planned Parenthood of Kansas and Mid-Missouri/Gee v. Planned Parenthood of Gulf Coast.** These two cases resulted in court rulings blocking efforts by some states to cut off funds to Planned Parenthood for non-abortion medical services for Medicaid patients. The courts ruled that those patients have a right to select their health care provider.

**6.) Altitude Express Inc. v. Zarda.** The case challenges a determination former President Barack Obama's administration made that a reference to "sex" in Title VII of the Civil Rights Act of 1964 applies to transgender people.